

**JOINT LEGISLATIVE UTILITY
REVIEW COMMITTEE**



**REPORT TO THE
1995 GENERAL ASSEMBLY
OF NORTH CAROLINA**

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North Carolina General Assembly
Joint Legislative Utility Review Committee
State Legislative Building
Raleigh 27601

SENATOR JOSEPH E. JOHNSON
COCHAIRMAN
P. O. Box 31507
RALEIGH, N. C. 27622

STEVEN J. ROSE, COMMITTEE COUNSEL
545 LEGISLATIVE OFFICE BUILDING
300 NORTH SALISBURY STREET
RALEIGH, N. C. 27603-5925
TELEPHONE: (919) 733-2578
FACSIMILE: (919) 733-3113

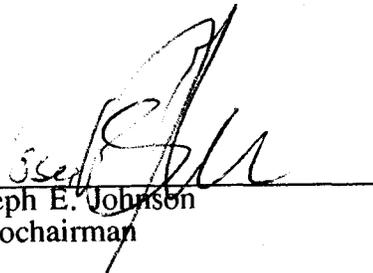
REPRESENTATIVE GEORGE W. MILLER, JR.
COCHAIRMAN
P. O. Box 451
DURHAM N. C. 27702-0451

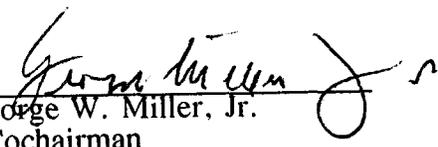
JACQUELYN HAMBY, COMMITTEE CLERK
TELEPHONE: (919) 733-5977
FACSIMILE: (919) 733-2599

December 31, 1994

TO THE MEMBERS OF THE 1995 GENERAL ASSEMBLY:

Pursuant to Article 12A of Chapter 120 of the North Carolina General Statutes, the Joint Legislative Utility Review Committee herewith submits its report to the General Assembly.


Sen. Joseph E. Johnson
Senate Cochairman


Rep. George W. Miller, Jr.
House Cochairman



JOINT LEGISLATIVE UTILITY REVIEW COMMITTEE

MEMBERS

Sen. Joseph E. Johnson
Cochairman

Sen. David Hoyle

Sen. Paul S. Smith

Rep. George W. Miller, Jr.
Cochairman

Rep. David T. Flaherty, Jr.

Rep. Erin J. Kuczmariski

STAFF

Mr. Steven J. Rose
Legal Counsel to the Committee

Ms. Jacquelyn Hamby
Clerk to the Committee

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INTRODUCTION

The Joint Legislative Utility Review Committee is a permanent committee of the General Assembly, as provided in Article 12A of Chapter 120 of the General Statutes. The Committee consists of six members, three each from the Senate and the House of Representatives. The House members are appointed by the Speaker of the House. The Senate members are appointed by the President Pro Tempore of the Senate. Members must be sitting members of the General Assembly. They serve at the pleasure of the appointing officer. A Senate cochairman and a House cochairman are designated by the respective appointing officer.

The general purpose of the Committee is to evaluate the actions of the State Utilities Commission and the Public Staff, and to analyze the operations of the utility companies operating in North Carolina. The Committee also stays abreast of regulatory changes relating to utilities at the federal level, judicial decisions, and technical changes affecting utilities. The Committee is authorized to make reports and recommendations to the General Assembly, from time to time, on matters relating to the powers and duties of the Committee (G.S. 120-70.3(7)).

The stated powers and purposes of the Committee include undertaking specific studies as may be requested by the President Pro Tempore of the Senate, the Speaker of the House of Representatives, the Legislative Research Commission, or either House of the General Assembly (G.S. 120-70.3(8)).

The Legislative Research Commission requested the Committee to study regulatory treatment of the gain on sale of water and sewer facilities, and the operation of municipal electric utility systems (Appendix A and B).

This report of the Joint Legislative Utility Review Committee is made in response to the specific request of the Legislative Research Commission, and as part of the Committee's general and ongoing obligation to provide information and

recommendations to the General Assembly relating to public utilities. It covers the period of time from the Committee's 1994 report, which ended with activities on May 20, 1994, through December 22, 1994.

TECHNICAL CHANGES TO ARTICLE 12A OF CHAPTER 120 OF THE GENERAL STATUTES

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of the legislation set out in Appendix C.

Explanation of Proposed Legislation

The proposed legislation amends G.S. 120-70.2 to provide that vacancies occurring on the Joint Legislative Utility Review Committee will be filled by the original appointing officer of the appropriate body of the General Assembly, rather than the presiding officer of that body.

Background

When the Joint Legislative Utility Review Committee was made a permanent legislative oversight committee by the passage of Article 12A of Chapter 120, the House members were appointed by the Speaker of the House and the Senate members were appointed by the President of the Senate. Vacancies were to be filled by the presiding officer of the appropriate house. Thus, House vacancies were filled by the Speaker of the House and Senate vacancies were filled by the President of the Senate. The 1991 General Assembly amended Article 12A, along with many other statutes dealing with appointments, to provide that the President Pro Tempore of the Senate would make Senate appointments, rather than President of the Senate. This was effective January 1, 1993. When this was done, the provision of G.S. 120-70.2 providing for filling of vacancies was not amended. Therefore, after January 1, 1993, G.S. 120-70.2 provided for the Senate members to be appointed by the President Pro Tempore, but for Senate vacancies to be filled by the President of the Senate. Obviously, the intent of the statutory change by the 1991 General Assembly was for the President Pro Tempore to make all appointments to the committee. The bill

recommended by this Committee makes the conforming change which should have been made when G.S. 120-70.2 was amended by the 1991 General Assembly.

PROBLEMS ASSOCIATED WITH MULTIPLE CONNECTION NONMUNICIPAL SEWER SYSTEMS

Recommendation of the Committee

The Joint Legislative Utility Review Committee recommends the enactment of the legislation set out in Appendix D. In the Committee's Report to the 1993-94 General Assembly, the Committee extensively considered this subject and, while recommending the enactment of certain legislation at that time, stated that it may have additional recommendations to make to the General Assembly upon further consideration of this problem. This recommended legislation is intended to help answer the question of how the failure of multiple connection nonmunicipal sewer systems which are operating as public utilities, can be prevented in the future.

Explanation of proposed legislation

The proposed legislation amends G.S. 62-110.3, which sets out the bond requirements for those water and sewer companies regulated as public utilities. This includes those companies selling water or sewer services for a fee, with the exception of those operated by governmental or quasi-governmental entities, those serving less than 10 residential customers, and those operated by homeowners' associations. The proposed legislation removes the present cap of \$200,000 on the surety bond which the Commission imposes on such companies prior to issuing a franchise. Thus, the minimum bond remains \$10,000, but the maximum is at the discretion of the Utilities Commission. The bill also amends the matters which the Commission must consider in setting the bond. Specifically, with regard to the acquisition of an existing company, the Commission must consider the condition and type of equipment involved, in addition to the present requirement to consider the age of the equipment. The present provision which allows the Commission to consider any other relevant factors is amended to specifically include consideration of the design of the system. A further

amendment requires the Commission to make appropriate findings as to the factors it has considered in setting the bond. The fact that an applicant has posted a bond with another state government agency is no longer a consideration, nor is the fact that the applicant has posted a bond for other water and sewer systems.

A further provision in the bill requires any water or sewer public utility which will be extending service into contiguous territory to advise the Commission of such proposed extension and the Commission must require the utility to furnish the appropriate bond taking into account the original service area and the proposed extension. Such a bond will apply to all service areas of the water and sewer utility without regard to when the original certificate was issued.

The act is effective upon ratification.

Background

The Joint Legislative Utility Review Committee began considering the problems of multiple connection nonmunicipal public utility sewer systems in December, 1993. The problems were brought to light with the failure of one of these systems, North State Utilities. The Committee devoted a good deal of time to investigating this problem and recommended legislation to the 1994 Session of the General Assembly. (See the Committee's Report to the 1993-94 General Assembly.) That legislation was intended to provide some relief to the persons who had been the victims of the failure of North State Utilities. The legislation did pass. It is contained in Chapters 696 and 714 of the 1993 Session Laws (Regular Session, 1994). The provisions specifically dealing with monetary relief are applicable only to applications filed on or before December 31, 1994. The Committee will obtain the results of those applications for monetary relief and report on them in the future.

The Committee said at that time that the broader question of how to prevent similar problems in the future remained to be answered. The legislation proposed in this report is intended to help answer that question.

The Committee continued its inquiries at its meetings on September 16, October 28, December 9, and December 22, 1994. It received recommendations for statutory changes from the North Carolina Utilities Commission, the Public Staff, and the Department of Environment, Health, and Natural Resources. The legislation recommended in this report is from the recommendation of the Utilities Commission and the Public Staff. The Department of Environment, Health, and Natural Resources did recommend similar legislation. The Committee made certain modifications to the legislation proposed by the Utilities Commission and the Public Staff. The legislation in its present form is supported by the Utilities Commission, the Public Staff, and the Department of Environment, Health, and Natural Resources.

With regard to other changes recommended by DEHNR, the Committee is unable to recommend those proposals. Indeed, the Committee is not sure that DEHNR is prepared to fully endorse those recommendations. Therefore, the committee will continue to focus its attention on this problem and may have further recommendations in the future.

The legislation proposed in this report will allow the Utilities Commission to tailor the bonding requirements for public utility water and sewer companies to specific situations, not the least of which will be the design and type of the system. One of the problems with North State Utilities was the use of a system which did not have a track record. It turned out to be extremely sensitive to the type of operation and maintenance it received and, in the end, when the system failed and the operator sought to abandon it, the amount of the bond which had been required was woefully inadequate to protect the customers.

The Committee could not recommend the DEHNR legislative proposals at this time. Further information is needed. There is also the possibility that the disagreements between the Utilities Commission and DEHNR over DEHNR's recommendations can be worked out with further negotiations between those parties.

It should also be noted that the Public Staff concluded its audit of North State Utilities and presented the results to the Committee at its meeting on October 28, 1994. The conclusion of the Public Staff is that the failure of North State was due to gross mismanagement. The Public Staff could find no assets of North State Utilities. The conclusion of the Public Staff with regard to the reason that North State failed is similar to the conclusion of the Committee appointed by the Secretary of DEHNR, which found that the failure of the North State systems was due to improper operation and maintenance.

The Committee, at its meeting on December 22, 1994, authorized a letter to be sent to the Secretary requesting information on specific actions which have been taken by DEHNR to ensure that there would not be a repetition of the North State incident. The response of the Secretary and its consideration by the Committee will come at a time outside the time period covered by this report, and will be presented in the next report of the Committee.

**STUDIES REQUESTED BY THE LEGISLATIVE RESEARCH COMMISSION:
MUNICIPALLY OPERATED ELECTRIC UTILITIES AND GAIN ON SALE OF
WATER OR SEWER PUBLIC UTILITIES TO MUNICIPALITIES**

Recommendations

The Committee has no recommendation concerning municipally operated electric utility systems. The Committee may have recommendations in the future, after further study. The Committee has no recommendation with regard to treatment of gain on sale of water and sewer public utilities to municipalities. The Utilities Commission's most recent order concerning gain on sale has been appealed. The Committee feels it is appropriate to wait for the court to render its decision before proceeding further.

Background

The Legislative Research Commission requested the Joint Legislative Utility Review Committee to study issues related to municipal electric utility systems and the regulatory treatment of the gain on sale of water or sewer facilities by public utilities to municipalities.

On April 22, 1994, the Committee heard a report on municipally operated natural gas systems. The Committee felt that it was important to review this area in relation to a consideration of municipally operated electric utilities. On May 13, 1994, the Committee heard a report on municipally operated electric systems. On December 22, 1994, the Committee adopted the recommendation set out above.

The Committee heard a brief report on gain on sale of water or sewer public utilities to municipalities. The position of the Utilities Commission had been that gain on sale should be split equally between the shareholders of the selling utility and the customers of that utility. In a recent case, however, the Utilities Commission had allowed the shareholders of the utility to retain all of the gain on sale, representing a departure from previous decisions. It is this order that has been challenged by the

Public Staff and is currently before the Court of Appeals. Since the Commission's method of treatment of gain on sale cannot be considered final until the court ruling is handed down, the Committee felt it was appropriate to wait for the court to render its decision before proceeding further. It reached this conclusion on December 9, 1994.

OTHER MATTERS CONSIDERED BY THE COMMITTEE

The Committee considered a number of other matters which included the following:

- (1) **Natural gas expansion--**The Committee heard a report on the ruling of the North Carolina Supreme Court upholding the constitutionality of House Bill 1039 (Chapter 598 of the 1991 Session Laws), which authorized the creation of expansion funds for the purpose of expanding the availability of natural gas service in North Carolina. In addition, the Committee heard about filings which would be made before the Utilities Commission to obtain the natural gas franchise for Surry, Yadkin, and Wilkes counties. Finally, the Committee heard from various local distribution natural gas companies concerning their plans to move forward with expansion now that the constitutionality of House Bill 1039 appeared settled. These presentations also contain recommendations for changes in the way natural gas rates are set. The Committee intends to pursue those recommendations at a future meeting.

- (2) **Local exchange telephone competition--**The Committee heard a full report on the status of local exchange telephone competition, which can include communications services by cable television companies, in addition to telephone companies. There has been significant activity in this area including several bills before the 1994 Congress which would have changed the landscape of local telephone and cable telecommunications services. None of those bills passed. The Committee will continue to study this area. It is reasonable to expect that there will be bills introduced in the 104th

Congress. If any pass, they will surely change the way in which the state can regulate local exchange telephone service.

- (3) Motor freight carriers--The Committee heard a complete review of the recent legislation passed by Congress which preempted most of the states' regulation of motor freight carriers. The Commission has already taken action to modify its regulations to fit the Congressional mandate. However, it is anticipated that changes to the General Statutes will be necessary. A task force including staff of the Utilities Commission, Public Staff, and Attorney General's staff, is currently at work on those changes.

- (4) Transportation of spent nuclear fuel--The Committee has continued to follow the controversy surrounding the transportation of spent nuclear fuel rods brought into the country from European research reactors, then shipped overland to the Savannah River Facility in South Carolina.

94C-SR-170A

APPENDIX

STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



January 6, 1994

The Honorable Joe Johnson, Cochair
Joint Legislative Utility Review Committee
P.O. Box 31507
Raleigh, North Carolina 27622

Dear Senator Johnson:

The Studies Act of 1993, House Bill 1319, as you may know, passed both chambers of the General Assembly but was not ratified. It will be signed upon the convening of the 1994 Session.

We note that Part VIII of House Bill 1319 would direct the Joint Utility Review Committee to study recent rulings by the Utilities Commission on the regulatory treatment of the gain on sale of water and sewer facilities and municipal electric utility systems. We call your attention to this provision and ask that you undertake that task.

We request that if you are prepared to make an interim report (with findings and recommendations including legislation) for submission to the 1993 General Assembly, you submit it to the Legislative Research Commission Cochairmen not later than Friday, April 29, 1994. The final report should be made not later than Friday, January 6, 1995, in the same manner.

We appreciate the service that you and the Joint Legislative Utility Review Committee provide to the people of North Carolina, and extend to you our best wishes.

A handwritten signature in black ink, appearing to read "Dan", enclosed within a large, hand-drawn oval.

Rep. Daniel T. Blue, Jr.

Yours truly,

A handwritten signature in black ink, appearing to read "Marc Basnight", written in a cursive style.

Sen. Marc Basnight

Cochairmen
Legislative Research Commission

cc: Representative George Miller
Senator Beverly Perdue
Steve Rose ✓
94S-SF-016

APPENDIX B
STATE OF NORTH CAROLINA
LEGISLATIVE RESEARCH COMMISSION
STATE LEGISLATIVE BUILDING
RALEIGH 27611



January 6, 1994

The Honorable George Miller, Cochair
Joint Legislative Utility Review Committee
P.O. Box 451
Durham, North Carolina 27702

Dear Representative Miller:

The Studies Act of 1993, House Bill 1319, as you may know, passed both chambers of the General Assembly but was not ratified. It will be signed upon the convening of the 1994 Session.

We note that Part VIII of House Bill 1319 would direct the Joint Utility Review Committee to study recent rulings by the Utilities Commission on the regulatory treatment of the gain on sale of water and sewer facilities and municipal electric utility systems. We call your attention to this provision and ask that you undertake that task.

We request that if you are prepared to make an interim report (with findings and recommendations including legislation) for submission to the 1993 General Assembly, you submit it to the Legislative Research Commission Cochairmen not later than Friday, April 29, 1994. The final report should be made not later than Friday, January 6, 1995, in the same manner.

We appreciate the service that you and the Joint Legislative Utility Review Committee provide to the people of North Carolina, and extend to you our best wishes.

A handwritten signature in cursive script, appearing to read "Dan".

Rep. Daniel T. Blue, Jr.

Yours truly,

A handwritten signature in cursive script, appearing to read "Marc".

Sen. Marc Basnight

Cochairmen
Legislative Research Commission

cc: Senator Joe Johnson
Senator Beverly Perdue
Steve Rose ✓
94S-SF-016A

APPENDIX C

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RLZ-002

THIS IS A DRAFT 9-FEB-95 12:30:40

Short Title: Joint Legis. Util. Committee.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE A TECHNICAL CORRECTION TO G.S. 120-70.2 REGARDING
3 FILLING OF VACANCIES ON THE JOINT LEGISLATIVE UTILITY REVIEW
4 COMMITTEE AS RECOMMENDED BY THE JOINT LEGISLATIVE UTILITY
5 REVIEW COMMITTEE.
6 The General Assembly of North Carolina enacts:
7 Section 1. G.S. 120-70.2 reads as rewritten:
8 "**§ 120-70.2. Appointment of members and organization.**
9 The Joint Committee shall consist of six sitting members of the
10 General Assembly. Three shall be appointed by the President Pro
11 Tempore of the Senate from the membership of the Senate and three
12 shall be appointed by the Speaker of the House of Representatives
13 from the membership of the House. Members will serve at the
14 pleasure of their appointing officer and any vacancies occurring
15 on the Joint Committee shall be filled by the ~~presiding~~
16 appointing officer of the appropriate house. The President Pro
17 Tempore of the Senate shall designate one Senator to serve as
18 cochairman and the Speaker of the House of Representatives shall
19 designate one Representative to serve as cochairman. A quorum
20 shall consist of four members."
21 Sec. 2. This act is effective upon ratification.



GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

D

95-RLZ-001

THIS IS A DRAFT 9-FEB-95 11:57:26

Short Title: Water/Sewer Bond.

(Public)

Sponsors:

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MODIFY THE BOND REQUIREMENTS FOR PUBLIC UTILITIES
3 PROVIDING WATER OR SEWER SERVICES AS RECOMMENDED BY THE JOINT
4 LEGISLATIVE UTILITY REVIEW COMMITTEE.
5 The General Assembly of North Carolina enacts:
6 Section 1. G.S. 62-110.3 reads as rewritten:
7 "**§ 62-110.3. Bond required for water and sewer companies.**
8 (a) No franchise may be granted to any water or sewer utility
9 company until the applicant furnishes a bond, secured with
10 sufficient surety as approved by the Commission, in an amount not
11 less than ten thousand dollars ~~(\$10,000) nor more than two~~
12 ~~hundred thousand dollars (\$200,000).~~ (\$10,000). The bond shall
13 be conditioned upon providing adequate and sufficient service
14 within all the applicant's service areas, including those for
15 which franchises have previously been granted, shall be payable
16 to the Commission, and shall be in a form acceptable to the
17 Commission. In setting the amount of a bond, the Commission
18 shall ~~consider:~~ consider and make appropriate findings as to the
19 following:

- 1 (1) Whether the applicant holds other water or sewer
2 franchises in this State, and if so its record of
3 operation,
4 (2) The number of customers the applicant now serves
5 and proposes to serve,
6 (3) The likelihood of future expansion needs of the
7 service,
8 (4) If the applicant is acquiring an existing company,
9 the ~~age~~ age, condition, and type of the equipment,
10 and
11 (5) Any other relevant ~~factors.~~ factors, including the
12 design of the system.

13 Any interest earned on a bond shall be payable to the water or
14 sewer company that posted the bond.

15 ~~(b) The Commission shall not require an applicant to post the~~
16 ~~bond required by subsection (a) if:~~

- 17 ~~(1) The applicant has posted a bond for the water or~~
18 ~~sewer system with another State government agency~~
19 ~~and the Commission finds that that bond satisfies~~
20 ~~the purposes of this section; or~~
21 ~~(2) The applicant has posted bonds for other water or~~
22 ~~sewer systems with the Commission totalling two~~
23 ~~hundred thousand dollars (\$200,000).~~

24 (b) Notwithstanding the provisions of G.S. 62-110(a) and
25 subsection (a) of this section, no water or sewer utility shall
26 extend service into territory contiguous to that already occupied
27 without first having advised the Commission of such proposed
28 extension. Upon notification, the Commission shall require the
29 utility to furnish an appropriate bond, taking into consideration
30 both the original service area and the proposed extension. This
31 subsection shall apply to all service areas of water and sewer
32 utilities without regard to the date of the issuance of the
33 franchise.

34 (c) The utility, the Public Staff, the Attorney General, and
35 any other party may, at any time after the amount of a bond is
36 set, apply to the Commission to raise or lower the amount based
37 on changed circumstances.

38 (d) The appointment of an emergency operator, either by the
39 superior court in accordance with G.S. 62-118(b) or by the
40 Commission with the consent of the owner or operator, operates to

1 forfeit the bond required by this section. The court or
2 Commission, as appropriate, shall determine the amount of money
3 needed to alleviate the emergency and shall order that amount of
4 the bond to be paid to the Commission as trustee for the water or
5 sewer system.

6 (e) If the person who operated the system before the emergency
7 was declared desires to resume operation of the system upon a
8 finding that the emergency no longer exists, the Commission shall
9 require him to post a new bond, the amount of which may be
10 different from the previous bond."

11 Sec. 2. This act is effective upon ratification.